

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:

APPLICATION OF INTERNATIONAL MINERAL
RESOURCES B.V. FOR AN ORDER TO TAKE
DISCOVERY PURSUANT TO 28 U.S.C. § 1782

Applicant.

Case No. _____

DECLARATION OF JONATHAN D. COGAN

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ENRC: Serious Fraud Office launches criminal investigation

FTSE 100 miner investigated over fraud, bribery and corruption claims relating to its Kazakhstan and African businesses

Simon Goodley, Mark Hollingsworth and Rupert Neate
guardian.co.uk, Thursday 25 April 2013 10.42 EDT



ENRC chairman Mehment Dalman, who had been leading the internal investigation, resigned this week. Photograph: Linda Nylind for the Guardian

→ The Serious Fraud Office has launched a criminal investigation into Eurasian Natural Resources Corporation (ENRC), the embattled FTSE 100 miner that has been beset by corruption allegations.

The move follows efforts by the company to conduct its own investigation into allegations made by a whistleblower relating to its Kazakhstan and African businesses, the findings of which the company had been reporting to the SFO.

→ The SFO said: "The director of the Serious Fraud Office has accepted ENRC for criminal investigation. The focus of the investigation will be fraud, bribery and corruption relating to the activities of the company or its subsidiaries in Kazakhstan and Africa."

The company said: "ENRC confirms that it is assisting and cooperating fully with the SFO. ENRC is committed to a full and transparent investigation of its procedures and conduct".

→ The SFO investigates and prosecutes the UK's biggest frauds and has been instrumental in the handing down of fines and custodial sentences.

ENRC has suffered a series of high-profile departures, including the resignation this week of its chairman, Mehmet Dalman, who had been leading the internal investigation.

On Monday Dalman, who had staked his reputation on clearing up the ENRC mess, admitted: "I believe I have achieved all that I can as chairman of ENRC."

The company's law firm, Dechert, which had been hired by the company to conduct its investigation, has also parted company with the mining group, a move that prompted the SFO to demand that the law firm hand over documents relating to the case.

The company's failed efforts to get to the bottom of corruption allegations contributed to the shares being the worst performer in the FTSE 100 last year. The controversies also come after the ousting of former chairman Sir Richard Sykes and independent director Ken Olisa in a 2011 boardroom coup backed by the founding directors, when Olisa memorably described ENRC'S behaviour as "more Soviet than City".

→ The so-called "Trio" of founders – Alexander Machkevitch, Patokh Chodiev and Alijan Ibragimov – still own 44% of the company and said last week they were considering a bid to take the company private again. The possible takeover is thought to have persuaded the SFO to launch an inquiry while the company is still listed in London.

When ENRC floated in 2007, its prospectus outlined areas of potential concern for future investors, including the existence of a complex structure called the Russian Trading System (RTS). The document stated that the system involved sales made by ENRC to third parties and resulted in cash payments to ENRC's founders. Their representatives declined to comment.

Meanwhile, a presentation given to the SFO last year by Dechert, seen by the Guardian, states that its efforts were hampered by staff forging documents, supplying the "wrong computer to the investigations team" and setting up a "false office".

It also outlines allegations concerning the purchase of a farm in Kazakhstan by a director of the ENRC subsidiary SSGPO, claiming that the acquisition and running costs of the farm were "paid from SSGPO funds" and that the farm was owned through a "nominee shareholding on behalf of SSGPO president and major shareholder, Alijan Ibragimov".

Representatives of Ibragimov declined invitations to comment on the document, although it is not yet clear what, if any, action the SFO may take.

Meanwhile, in Africa the company has faced questions over its former partner in the Democratic Republic of Congo, Dan Gertler. The Israeli tycoon has been dogged by accusations that a close relationship with the DRC's president, Joseph Kabila, allowed him to buy interests in the country's mining assets on the cheap – accusations he has always denied.

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2013

Move piles pressure on Eurasian Natural Resources Corporation as inquiries into
Kazakh and African operations rumble on

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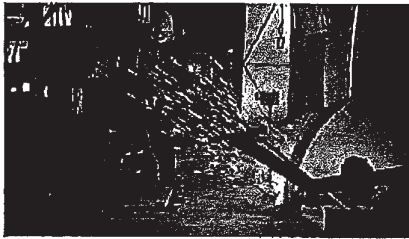
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April 19, 2013 6:58 pm

Three ENRC founders weigh buy-out offer

By Christopher Thompson and Caroline Binham



Melting pot: ferroalloys is ENRC's largest division, contributing about 67 per cent of underlying earnings

The founding shareholders of Eurasian Natural Resources Corp are weighing a buyout offer for the loss-making Kazakhstan miner left bloodied by growing investor concerns over its corporate governance.

Alexander Mashkevich – who together with Patokh Chodiev and Alijan Ibragimov own 44 per cent of ENRC's stock – yesterday said the three were reviewing "the possibility of forming a consortium" with the Kazakh government to make an offer for the company. Mr Mashkevich added that talks

were at "a very preliminary stage".

Shares in ENRC on Friday closed 27 per cent higher at 291p.

The company has shed 58 per cent of its market capitalisation in the past year, amid falling commodity prices and corporate governance issues.

ENRC declined to comment.

Ash Lazenby, an analyst at Liberum, said a bid, if forthcoming, was unlikely to be contested.

"An offer for the company appears opportunistic given ENRC shares have been very weak," he said in a research note. "The bid is unlikely to be contested (no other likely buyers) thereby buffering an acquisition premium."

Like its peers the embattled miner has been pummelled by volatile commodity prices and impairment charges. But it is corporate governance problems that have made ENRC, according to one analyst, "un-investible".

Ever since the company listed in 2007 at 540p there have been concerns over the influence wielded by the founding shareholders, none of whom is ethnically Kazakh. The three won control of huge metals, mining, energy and financial assets in the wake of Kazakhstan's murky privatisations of the 1990s. Kazakhmys, the FTSE 250 copper miner, owns an additional 26 per cent stake.

But if powerful shareholders are one issue – Vedanta, Kazakhmys and Fresnillo are other miners with big shareholders – death threats are something else.

Alex Graft, a former senior ENRC corporate investigator, received an email while working at the company warning him to stay away from ENRC's Kazakhstan businesses.

"You have touched matters where a lot of money is involved and you will be torn into pieces," it read. "You and all your relatives." Mr Graft this month lost his job.

Separately, an exploration manager in Mozambique, where ENRC owns coal assets, has been suspended because of allegations of impropriety.

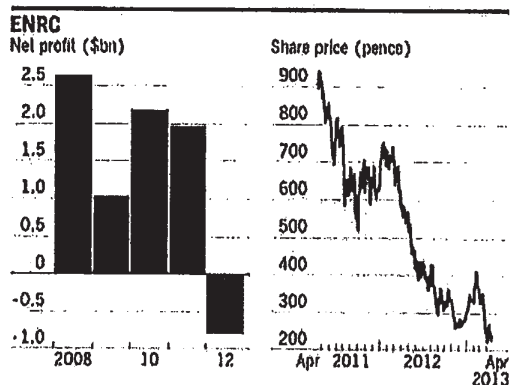
Last week also saw the sudden departure of chief commercial officer Jim Cochrane, who had been part of the management team for a decade.

In addition ENRC's chairman Mehmet Dalman, who is overseeing an internal probe into the company's businesses in Kazakhstan and Africa, has threatened to resign over unspecified "issues of principle," according to one person familiar with the matter.

Dechert, a US law firm hired to lead the internal probe, has been replaced just weeks before it was due to file a report on ENRC's African mines to the Serious Fraud Office in the UK.

The SFO has issued Dechert with a demand for ENRC documents in a sign that the agency is considering an official criminal probe.

The shareholders' announcement comes ahead of a looming deadline. Given ENRC's falling market capitalisation it could face ejection from the FTSE 100 at the London Stock Exchange's next quarterly review at the end of June.



When fellow Kazakh miner Kazakhmys was ousted from the top index in March its share price fell by 50 per cent that month, partly due to share selling by index-tracker funds.

Kazakhmys shares on Friday rose 24.4 per cent to 385.7p as the value of its ENRC holding increased.

ENRC has said it was pondering issuing new shares to meet a forthcoming increase in the required minimum of readily tradeable shares at FTSE 100 companies.

The rule change requires a "free float" of at least 25 per cent of the company's shares as of January 2014. ENRC's free float stands at 18 per cent.

In its latest annual results ENRC took a \$1.2bn impairment charge and, amid lower commodity prices, posted a \$550m pre-tax loss for 2012.

Last Wednesday Mr Dalman travelled to Cardiff to watch the city's football team, where he sits on the board, gain promotion to the English Premier League.

In spite of a dull game – it ended 0-0 – the result must have been a welcome respite from his day job.

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U.K.'s PIRC Wants Government Probe of ENRC, Bumi

Published April 26, 2013 Dow Jones Newswires

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Share

An Independent U.K. shareholder advisory group wrote a letter to U.K. Business Secretary Vince Cable on Thursday requesting the government launch a formal investigation into the operations of troubled miners Bumi PLC (BUMI.LN) and Eurasian Natural Resources Corp PLC (ENRC.LN).

In a letter seen by The Wall Street Journal, PIRC said the government should use its powers under the Companies Act. The government has done so in the past when the U.K.'s former Department of Trade and Industry launched investigations into the Mirror Group and hotel group Queen's Moat.

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The PIRC letter was first reported by The Telegraph newspaper on Friday.

PIRC said in its letter that "both companies are U.K. registered companies, but both are in the ludicrous position of commissioning investigations into themselves, when the directors of the parent companies themselves may well have cases to answer."

The companies have been embroiled in board room spats about corporate governance and conducted their own investigations into whistleblower allegations of wrongdoing while keeping the U.K.'s Serious Fraud Office abreast about their findings.

In the case of Kazakhstan-focused miner ENRC, the fraud office decided this week to launch a formal investigation into allegations of fraud, bribery and corruption at the company's Kazakhstan and African operations following months of dialogue with the company.

The formal investigation comes on the same week that ENRC's Chairman Mehmet Dalman resigned unexpectedly following the departure of a series of high-level executives.

The FTSE-100 miner's shares are down more than 50% since it was listed in London in 2007, due in part to board room spats regarding the influence of the founding shareholders over the company and other corporate governance concerns.

In the case of Indonesian coal miner Bumi, an anonymous

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whistleblower's allegations of financial irregularities at one of Bumi's Indonesian subsidiaries--Bumi Resources (BUMI.JK)--prompted a continuing struggle over the parent company's governance.

Earlier this week, Bumi PLC requested a temporary suspension of trading in its shares because its 2012 financial results missed a disclosure deadline as the company investigates the integrity of balance-sheet information at its other Indonesian subsidiary, Berau Coal Energy (BRAU.JK).

Bumi's shares are down more than 70% since its 2010 listing under the name Vallar.

PIRC also called for ENRC's shares to be suspended.

"It has been clear for sometime that the affairs of both Bumi and Eurasian Natural Resources Corporation fall short of the standard expected of U.K. listed companies," the shareholder advisory firm said. It said the problem stems from the "over-liberalisation of the listing regime when the U.K. Listing Authority was under the control of the ineffective Financial Services Authority, and the newly listed London Stock Exchange was pulling in lower quality companies on a volume and fee driven basis."

PIRC said that if the U.K. government is unable to bear the costs of the investigation in the current difficult environment, then the department should request that the LSE bears the costs.

"It is the LSE that was responsible for, and had profited from, bringing such companies to the London market," PIRC said.

In a statement, ENRC said it "is committed to a full and transparent investigation of its procedures and conduct."

The LSE declined to comment. A representatives for Bumi wasn't immediately available following the close of business hours.

Write to Alex MacDonald at alex.macdonald@dowjones.com

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HITC BUSINESS

ENRC Founders Face Dutch Fraud Lawsuit

The trio of oligarchs behind Eurasian Natural Resources Corporation (ENRC) – the FTSE 100 miner being investigated by the Serious Fraud Office – have been hit by a fraud and bribery lawsuit against a separate part of their empire.

The Guardian has established that claims lodged in the Dutch courts show that International Mineral Resources (IMR) – which is wholly owned by the ENRC trio of Alexander Machkevitch, Patokh Chodiev and Alijan Ibragimov – is accused of "blatant fraud, exacerbated by bribery" by Russian fertiliser group EuroChem.

EuroChem had previously said it was claiming damages of \$800m (£500m) from its supplier Shaft Sinkers, which is 48% owned by IMR, following problems with a \$2bn Russian potash mining project.

In the new case, the fertiliser group alleges that an IMR executive bribed a EuroChem employee with hundreds of thousands of roubles to cover up the alleged ineffectiveness of Shaft Sinkers' work. It also claims IMR facilitated the concealment of a report that questioned whether Shaft Sinkers's sealing technology could be effective on the potash project.

EuroChem, which is owned by the Russian billionaire Andrey Melnichenko, is again seeking \$800m in damages – but this time from



(IMR – having made a similar-sized claim in October in separate arbitration proceedings against Shaft Sinkers.

IMR says its defence to the Dutch case will state that the EuroChem employee had signed a formal consultancy agreement with Shaft Sinkers to help it promote its business, which he had cleared with his immediate superior. They will also argue the alleged briber was only a consultant to IMR, not an employee. An IMR spokesman added: "The suggestion that IMR was somehow involved in the legitimate arrangement between Shaft Sinkers and a EuroChem employee is a fabrication."

(IMR says no payments were made by it as part of this process or at all, and also that Shaft Sinkers has at all times been run as a separate entity with separate corporate governance. It says any payments that might have made under any consultancy agreement between Shaft Sinkers and the Russian company would have been entirely legitimate and proper.

Shaft Sinkers, which terminated the contract to prevent flooding of a 1,000 metre mining shaft, has filed counterclaims in its separate cases with EuroChem for \$15m of fees it says it is still owed.

(A spokeswoman for Shaft Sinkers added: "Shaft Sinkers understands that EuroChem has issued proceedings against IMR in the Dutch courts and that IMR has instructed lawyers and intends to vigorously defend such proceedings.

"The three arbitrations [two in Zurich, one in Paris] between EuroChem and Shaft Sinkers and the claims brought by Shaft Sinkers in all three arbitrations are subject to confidentiality and we therefore cannot comment on these cases other than to reiterate that we believe EuroChem's claims are without merit and we are defending these claims and pushing our claims vigorously.

" Likewise we believe the claim brought against IMR is without merit. The original contract was awarded to Shaft Sinkers in 2008 and was terminated by Shaft Sinkers in 2012"

In 2010 Shaft Sinkers floated on the London Stock Exchange but, after initially performing well, the shares have now lost about 70% of their value, and slumped by about a third last October on news of the EuroChem dispute.

On Monday, Shaft Sinkers's annual results statement noted that last year's 15% drop in revenues to £192.5m was partly attributable to the termination of the project with EuroChem.

The oligarchs behind IMR also own 44% of ENRC, which faces an SFO inquiry into allegations of "fraud, bribery and corruption relating to the activities of the company or its subsidiaries in Kazakhstan and Africa". The move followed an internal ENRC investigation into string of corruption allegations, frequent corporate governance rows and a procession of high profile departures from the mining company.

ENRC has confirmed it is assisting and co-operating fully with the SFO. It said: "ENRC is committed to a full and transparent investigation of its procedures and conduct".

Meanwhile the ENRC founding trio also said last month that they are considering taking ENRC private once more.

This article was written by Simon Goodley and Joris Luyendijk, for The Guardian on Wednesday 1st May 2013 22.41 Europe/London

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